

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Plaintiff, v. DR. FÉLIX ROSA-CARTAGENA Defendant.	CIVIL NO. _____ COLLECTION OF MONEY
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COMPLAINT FOR CONSENT JUDGMENT

TO THE HONORABLE COURT:

COMES NOW the United States of America, by and through the undersigned attorneys, and very respectfully alleges and prays:

INTRODUCTION

1. The United States files this action under the False Claims Act, 31 U.S.C. § 3279 et seq., to recover civil monetary penalties from the defendant's false claims to the United States Department of Health and Human Services made in violation of federal law and applicable statutory provisions.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1345 and its general equitable jurisdiction; as well as subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, since the civil action arises under the laws of the United States, in particular, 31 U.S.C. §§ 3729, 3730.

3. This Court has personal jurisdiction over Defendant, who resides within the District

of Puerto Rico.

4. Venue is proper in this District under 28 U.S.C. § 1391 and 31 U.S.C. § 3732(a).

Defendant can be found, resides, and transacts business within the District of Puerto Rico.

PARTIES

5. The plaintiff is the United States of America, on behalf of its Department of Health and Human Services, hereinafter referred to as “HHS”.

6. Defendant **Félix Rosa-Cartagena**, hereinafter referred to as “Dr. Rosa-Cartagena”, was at all times relevant, a physician and Emergency Medicine Practice specialist licensed to practice medicine in the Commonwealth of Puerto Rico. Dr. Rosa-Cartagena is also a resident of Puerto Rico. At all times relevant, Dr. Rosa-Cartagena (NPI #124590493) operated an Emergency Group Practice composed of a group of physicians and support medical staff physically located at Hermanos Meléndez Hospital in the municipality of Bayamón, Puerto Rico. Dr. Rosa-Cartagena was directly involved and participated in the daily operations of the Emergency Group Practice, called MWR Group, during the relevant period of time.

THE MEDICARE PROGRAM

7. Except as otherwise specifically noted, the allegations set forth below describe the Medicare Program and other facts during the period relevant to this action, that is from on or about June of 2012 until June of 2014.

8. The United States Department of Health and Human Services (“HHS”), through its component agency, the Centers for Medicare and Medicaid Services, (hereinafter referred to as “CMS”), administers the national Medicare Program.

9. The Medicare Program, which is set forth in Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 et seq., consists of four (4) parts, commonly referred to as Parts A, B, C and D. Part A, B and D are not at issue here. Under Part C, beneficiaries enrolled in a managed care plan administered by private health insurance companies or Medicare Advantage (MA) Plans, which are contracted by CMS. Medicare y Mucho Mas (“MMM”), is an entity contracted by CMS to provide managed care to beneficiaries under Part C.

10. MMM is a risk-bearing entity, licensed or otherwise authorized by the State to assume risk for offering health insurance or health benefits coverage, such that the entity is authorized to accept prepaid capitation for providing, arranging, or paying for comprehensive health services under a Medicare Advantage contract.

11. As Medicare Advantage Plans, MMM is responsible of receiving, adjudicating and paying claims of authorized providers seeking reimbursements for the cost of health care benefits, items, or services provided to Medicare Part C beneficiaries.

12. Physicians who perform medical services in connection with the Medicare Program apply for and if approved, are assigned a “number”. The number allow the physicians to submit bills, commonly referred to as “claims”, for payment to Medicare, through MMM, in order to seek reimbursement for medical services that they had provided to Medicare Part C beneficiaries.

13. In order to receive payment from Medicare through MMM, a physician is required to submit a health insurance claim form, known as Form HCFA-1500 (“HCFA 1500”) wherein the physician certifies that the claims are true, correct, complete and that the form was prepared in compliance with the laws and regulations governing the Medicare Program. Physicians further certify that the services billed were medically necessary and were in fact provided as billed.

14. The authorized participating physicians may submit claims for payment either electronically or in hard copy, as allowed by MMM. Each claim form required certain important information, including:

- a. the supplier's Medicare identification number;
- b. the Medicare beneficiary's name, address, and date of birth;
- c. the Medicare beneficiary's identification number;
- d. the name and identification number of the physician who ordered the item or service;
- e. the health care products, items, or services supplied to the beneficiary;
- f. the applicable Medicare billing codes for these products, or services;
- g. the date of service; and
- h. the diagnosis.

15. The Office of Inspector General of the Department of Health and Human Services ("HHS OIG"), through its Office of Investigations ("OI"), conducts criminal, civil and administrative investigations of fraud and misconduct related to HHS programs, operations and beneficiaries. HHS OIG operates an OIG Hotline, which allows the public, industry stakeholders, and others to report suspected fraud, waste and abuse. HHS OIG also works collaboratively with other components to develop appropriate enforcement actions and recommend fixes to aspects of HHS programs vulnerable to fraud.

16. For Medicare billing purposes and for all times relevant to this case, physician services provided to beneficiaries were identified by a Current Procedural Terminology ("CPT") code. Medical costs covered under Medicare Part C include emergency medical services for observation or inpatient hospital care, for the evaluation and management of a patient including

admission and discharge on the same date. As per the Medicare Claims Processing Manual, carriers make payment on the basis of the Observation or Inpatient Care Services procedure codes only if the presenting problems requiring admission are of the highest severity. Per the CPT, the code assigned to this type of procedure and corresponding payment is 99236. Medical costs also covered under Medicare Part C include medical services for Emergency Department Visits for the evaluation and management of a patient. For this category, usually the presenting problems are of high severity and pose an immediate significant threat to life or physiologic function. Per the CPT, the code assigned to this type of procedure and corresponding payment is 99285. In order to be covered by Medicare, the services need to be reasonable and necessary for the diagnosis or treatment of the illness or injury for which they are administered according to accepted standards of medical practice.

STATEMENT OF FACTS

17. The United States contends that it has certain civil claims against Dr. Rosa-Cartagena arising from an investigation conducted by HHS OIG related to the undue submission of Medicare bills for payment of services performed from June 2012 until June 2014 in the municipality of Bayamon, Puerto Rico, using Observation or Inpatient Care Services code 99236 and Emergency Department Visits code 99285, without meeting the criteria for such procedure codes. It is further claimed that the improper use of these codes (up-coding) represented a higher level of care than was indicated, and resulted in corresponding higher payments to the medical provider. That conduct is referred to below as the “Covered Conduct.”

CLAIM FOR RELIEF

False Claims Act– 31 U.S.C. § 3729 (a) (1)

18. This is a claim for civil monetary penalties under the False Claims Act, 31 U.S.C.

§ 3729 (a) (1).

19. Paragraphs 1 through 17 of this Complaint are hereby re-alleged and incorporated as though fully set forth herein.

20. As part of the scheme to defraud and described as the covered conduct, Dr. Rosa-Cartagena submitted and caused to be submitted over two hundred and four (204) claims for payment to the MA Plan, for the alleged delivery of health care benefits, items or services that correspond to the CPT codes listed in paragraph seventeen (17) above, when such services were either up-coded or never rendered.

21. Under the FCA, a “claim” includes requests for money presented to agents of the United States or to a contractor, grantee or other recipient, if the money is to be used on the government’s behalf or to advance a government interest, as long as the United States provided any portion of the money requested.

22. Each of these false statements constitute a unique claim of provider fraud on a managed care organization, for which a civil monetary penalty must be assigned, as allowed by law in an amount ranging from \$5,500.00 to \$11,000.00 each.

23. On June 5, 2018, the parties in this action reached a Settlement Agreement in which Dr. Rosa-Cartagena agreed to pay \$300,000.00 in U.S. Currency, plus interest, as civil monetary penalties, to be paid off subject to a payment schedule.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that judgment be entered in its favor and against the defendant as follows:

A. Enter a consent judgment to enforce the agreement reached by the parties in this

action.

B. Grant the United States interests from the day of judgment and such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this 28th day of November 2018.

ROSA EMILIA RODRIGUEZ –VELEZ
United States Attorney

/s Jorge L. Matos
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Attachment 1: Civil Cover Sheet

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Jorge L. Matos, Assistant U.S. Attorney
U.S. Attorney's Office, 350 Chardon Ave, Suite 1201
Hato Rey, PR 00918 Tel: (787) 766-5656

DEFENDANTS

FELIX ROSA-CARTAGENA

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.Attorneys (If Known)
Ignacio Rivera, Esq.
P.O. Box 9023880
San Juan, PR 00902-3880 (787) 239-0050

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|---|--|
| <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	SOCIAL SECURITY	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 863 DIWC/DIWVW (405(g))	<input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	IMMIGRATION	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 465 Other Immigration Actions		
	<input type="checkbox"/> 448 Education			

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1345

VI. CAUSE OF ACTION

Brief description of cause:
Collection of MoneyVII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 300,000.00 CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OR RECORD

11/28/2018

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT _____

APPLYING IFFP _____

JUDGE _____

MAG. JUDGE _____

Attachment 2: Category Sheet

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CATEGORY SHEET

You must accompany your complaint with this Category Sheet, and the Civil Cover Sheet (JS-44).

Attorney Name (Last, First, MI):

USDC-PR Bar Number:

Email Address:

1. Title (caption) of the Case (provide only the names of the first party on each side):

Plaintiff:

Defendant:

2. Indicate the category to which this case belongs:

Ordinary Civil Case

Social Security

Banking

Injunction

3. Indicate the title and number of related cases (if any).

4. Has a prior action between the same parties and based on the same claim ever been filed before this Court?

Yes

No

5. Is this case required to be heard and determined by a district court of three judges pursuant to 28 U.S.C. § 2284?

Yes

No

6. Does this case question the constitutionality of a state statute? (See, Fed.R.Civ. P. 24)

Yes

No

Date Submitted: